

CHAPTER NO. 564

SENATE BILL NO. 2386

By Trail

Substituted for: House Bill No. 2129

By McMillan

AN ACT To amend Tennessee Code Annotated, Title 17, Chapter 5, relative to the Court of the Judiciary.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 17-5-101, is amended by deleting the period "." at the end of subdivision (1)(C) and by substituting instead the punctuation and language "; or".

SECTION 2. Tennessee Code Annotated, Section 17-5-101, is further amended by adding the following language as a new subdivision (1)(D):

(1)(D) The conduct of candidates for judicial office.

SECTION 3. Tennessee Code Annotated, Section 17-5-102, is amended by deleting it in its entirety and by substituting instead the following:

This Chapter applies to:

(a) All Tennessee judges, to include, but not be restricted to, appellate, trial, general sessions, probate, juvenile court, municipal and any other judge sitting or presiding over any court heretofore, or hereafter, created by the General Assembly or by the express or implied authority of the General Assembly;

(b) All persons for their conduct while sitting or presiding over any judicial proceeding, including, but not limited to, persons sitting by special appointment; and

(c) Candidates for judicial office, as defined by the Code of Judicial Conduct.

SECTION 4. Tennessee Code Annotated, Section 17-5-301, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) The Court of the Judiciary is hereby given broad powers to investigate, hear and determine charges sufficient to warrant discipline or removal, and to carry out its duties in all other matters as set forth in this chapter.

SECTION 5. Tennessee Code Annotated, Section 17-5-301, is further amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) The court shall appoint an attorney as disciplinary counsel, who shall serve at the pleasure of the court, and who may be removed by a majority vote of the court. The disciplinary counsel shall have the authority to employ additional

attorneys or staff for administrative support, subject to the approval of the court. Compensation for the disciplinary counsel and additional personnel shall be fixed by the court. Nothing in this section shall be construed to preclude the board of professional responsibility from acting as disciplinary counsel or providing all necessary administrative support.

SECTION 6. Tennessee Code Annotated, Section 17-5-301(e), is amended by deleting subdivisions (5) and (6) in their entirety and renumbering the remaining subdivisions accordingly.

SECTION 7. Tennessee Code Annotated, Section 17-5-301, is amended by deleting subsection (f) in its entirety and by substituting instead the following:

(f) The court has the power to impose any or any combination of the following sanctions:

(1) Suspension without impairment of compensation for such period as the court determines;

(2) Imposition of limitations and conditions on the performance of judicial duties, including the issuance of a cease and desist order;

(3) Private reprimand or private censure by the investigative panel; provided, that a private reprimand or private censure, whether imposed by the court or by an investigative panel, may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of the sanction to be imposed;

(4) Entry into a deferred discipline agreement;

(5) Public reprimand or public censure;

(6) Entry of judgment recommending removal of the judge from office.

SECTION 8. Tennessee Code Annotated, Section 17-5-301, is further amended by deleting subsection (g) in its entirety and by substituting instead the following:

(g) For the purposes of this chapter the following definitions apply:

(1) "Private reprimand" means a letter that details the finding of judicial misconduct and enumerates the reasons that such conduct is improper or brings discredit upon the judiciary or the administration of justice.

(2) "Private censure" means a written finding that the conduct of the judge or justice violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, and/or undermines public confidence in the administration of justice and requiring a judge or justice to appear personally before the court. A private censure is stronger than a private reprimand and may include a requirement that the judge or justice follow a specified course of corrective action.

(3) "Deferred discipline agreement" means a response to misconduct that is minor and can be addressed through treatment, training, or a rehabilitation program under which the judge agrees with

the recommendation of the investigative panel of the court to undergo evaluation and/or treatment, participate in educational programs or take any other corrective action. Other disciplinary sanction, arising from the same conduct, is suspended during the term of a deferred discipline agreement, and no further sanction will be imposed upon the successful completion of the deferred disciplinary agreement by the judge. Failure to comply with the disciplinary agreement authorizes the disciplinary counsel to proceed with other appropriate action.

(4) "Public reprimand" is identical to a private reprimand except that the letter is released to the press.

(5) "Public censure" is identical to a private censure except that the written finding is released to the press.

SECTION 9. Tennessee Code Annotated, Section 17-5-301, is amended by adding the following as a new, appropriately numbered subsection:

(i) The criteria to be considered by the court or the investigatory panel in determining the sanction or combination of sanctions appropriate for the level of culpability involved in the judge's misconduct include the following:

(1) whether the misconduct is an isolated instance or evidences a pattern of conduct;

(2) the nature, extent and frequency of occurrence of the acts of misconduct;

(3) whether the misconduct occurred in or out of the courtroom;

(4) whether the misconduct occurred while the judge was acting in his or her official capacity;

(5) whether the judge has acknowledged or recognized the occurrence, nature and impropriety of the acts;

(6) whether the judge has evidenced an effort to change or modify his or her conduct;

(7) the judge's length of service on the bench;

(8) whether there have been prior complaints about this judge, except where prior complaints have been found frivolous, unfounded, or without jurisdiction pursuant to Tennessee Code Annotated, Section 17-5-305;

(9) the effect of the misconduct upon the integrity of, and respect for, the judiciary;

(10) the extent to which the judge exploited his or her position for personal gain or satisfaction.

SECTION 10. Tennessee Code Annotated, Section 17-5-304, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d)(1) Upon the conclusion of the disciplinary counsel's investigation, disciplinary counsel may recommend to the investigative panel any or any combination of the following:

(A) Dismissal;

(B) Private reprimand, private censure, deferred discipline agreement, public reprimand, or public censure;

(C) The filing of formal charges;

(D) Referral to an appropriate agency; or

(E) A stay.

(2) The investigative panel may adopt, reject, or modify the recommendations of disciplinary counsel. If the investigative panel finds a violation for which the imposition of discipline is not warranted, it may dismiss the complaint. If the investigative panel finds that there is reasonable cause to believe the judge committed a judicial offense:

(A) It may direct disciplinary counsel to file formal charges;

(B) It may propose any or a combination of the following: private reprimand, private censure, deferred discipline agreement, public reprimand, or public censure to the judge. If the judge consents, the investigative panel shall impose the discipline or implement the deferred discipline agreement; or

(C) If the judge does not consent to the proposed discipline or the deferred discipline agreement, the investigative panel may direct disciplinary counsel either to file formal charges or dismiss the complaint.

SECTION 11. Tennessee Code Annotated, Section 17-5-308, is amended by adding the following sentence at the end of subsection (c):

The decision of the hearing panel is the decision of the court.

SECTION 12. Tennessee Code Annotated, Section 17-5-309, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) At the conclusion of the hearing, the court, acting through the hearing panel, may dismiss the charges or impose any sanction authorized in §17-5-301.

SECTION 13. Tennessee Code Annotated, Section 17-5-310, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) Within thirty (30) days from and after entry of the judgment of the court of the judiciary, the aggrieved judge may appeal to the Supreme Court, as a matter of right. The record on appeal will conform to the requirements of Rule 24 of the Tennessee Rules of Appellate Procedure.

SECTION 14. Tennessee Code Annotated, Section 17-5-311, is amended by deleting from the second sentence of subsection (a) the citation “§17-5-301(f)(5)” and substituting instead the citation “§17-5-301(f)(6)”.

SECTION 15. Tennessee Code Annotated, Section 17-5-307, is amended by deleting from the third sentence of subsection (b) the word “serviced” and substituting instead the word “served”.

SECTION 16. Tennessee Code Annotated, Section 17-5-304, is amended by deleting subsections (a) and (b) and substituting instead the following:

(a) Disciplinary counsel shall evaluate all information coming to disciplinary counsel's attention by complaint or from other sources that allege judicial misconduct or incapacity. Unless the complaint alleges specific facts, not conclusions, which would cause a reasonable person to believe that there is a substantial probability that the conduct involved violates §17-5-302, disciplinary counsel shall, subject to review by the investigative panel pursuant to subdivision (b)(3), dismiss the complaint, or if appropriate, refer the matter to another agency. If the information contains specific facts that would cause a reasonable person to believe that there is a substantial probability that the conduct violates §17-5-302, disciplinary counsel shall conduct a preliminary investigation.

(b)(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether the specific facts alleged are true and, if so, whether such facts would cause a reasonable person to believe that there is a substantial probability that a violation of § 17-5-302 has occurred; provided, that no subpoena shall issue to obtain testimony or evidence until the investigative panel authorizes a full investigation pursuant to subdivision (b)(3).


(2) When disciplinary counsel believes there is evidence supporting the allegations against a judge, the counsel shall recommend to the investigative panel assigned to the case that the panel authorize a full investigation. Disciplinary counsel may recommend a full investigation when there are grounds to believe that evidence which would cause a reasonable person to believe that there is a substantial probability that a violation of § 17-5-302 has occurred could be obtained by subpoena or further investigation. In all other cases, disciplinary counsel shall recommend that the matter be dismissed.

(3) The investigative panel shall review disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation.


SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 25, 2002


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 3rd day of April 2002


DON SUNDQUIST, GOVERNOR